

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: David Anton Johnson	Team: Team # 1	CCRB Case #: 200914963	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 09/19/2009 8:45 PM	Location of Incident: East 168th Street & Tinton Avenue	Precinct: 42	18 Mo. SOL 3/19/2011	EO SOL 3/19/2011	
Date/Time CV Reported Mon, 09/21/2009 11:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/24/2009 1:05 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Sean Lynch	04339	917115	HBX/QIM
2. POM Wilson Verdesoto	26997	937685	HBX/QIM

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Amill	27429	941345	HBX/QIM

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Lynch	Abuse: Sgt. Sean Lynch stopped § 87(2)(b)	
B.POM Wilson Verdesoto	Force: PO Wilson Verdesoto used physical force against § 87(2)(b)	
C.SGT Sean Lynch	Force: Sgt. Sean Lynch used physical force against § 87(2)(b)	

Case Summary

On September 19, 2009, Sgt. Sean Lynch of the Housing Borough Bronx/Queens Impact Response Team (HBX/QIM) filed a complaint with IAB, noting that a prisoner, § 87(2)(b) had sustained a laceration requiring five stitches during his arrest earlier that evening. This complaint was assigned log number 09-46486 and referred to the CCRB where it was received on September 21, 2009. On September 19, 2009, at approximately 8:45pm, PO Wilson Verdesoto of HBX/QIM arrested § 87(2)(b) for criminal possession of a firearm on the corner of East 168th Street and Tinton Avenue, in the Bronx. Before being arrested, § 87(2)(b) fled and was pursued by PO Verdesoto, Sgt. Lynch, and PO Frank Amill, all of whom were assigned to HBX/QIM at the time. The pursuit ended when PO Verdesoto tackled § 87(2)(b) at which point, Sgt. Lynch allegedly kicked and punched § 87(2)(b). The incident resulted in the following allegation:

Allegation A—Abuse of Authority: Sgt. Sean Lynch stopped § 87(2)(b)

- § 87(2)(g) [REDACTED]

Allegation B –Force: PO Wilson Verdesoto used physical force against § 87(2)(b)

- § 87(2)(g) [REDACTED]

Allegation C –Force: Sgt. Sean Lynch used physical force against § 87(2)(b)

- § 87(2)(g) [REDACTED]

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

§ 87(2)(b) was born on § 87(2)(b). He is a black male who is 5’8” and 155 pounds, with black hair and black eyes.

Statement to FDNY EMS Unit, ACR #§ 87(2)(b)

The report notes that § 87(2)(b) was treated on September 19, 2009, at approximately 10:56pm, at PSA3. It indicates that § 87(2)(b) attributed the laceration on the left side of his forehead to kicks he received to his face. (encl. 14a-c)

Statements made to § 87(2)(b)

According to the records of § 87(2)(b) visit to § 87(2)(b) on § 87(2)(b), § 87(2)(b) attributed the laceration on his face to an assault that occurred after an argument on the street. (encl. 15a-b)

CCRB Statement

On January 7, 2010, § 87(2)(b) was interviewed at the § 87(2)(b), on Riker’s Island. On September 19, 2009, at approximately 8:45pm, he was standing near the intersection of East 168th Street and Tinton Avenue, in the Bronx, with his friend, § 87(2)(b) and two to three other male acquaintances, whose names he did not know. The young men had been there talking for ten to fifteen minutes when a marked police car containing three uniformed

officers stopped alongside them. The investigation identified these officers as Sgt. Sean Lynch and Officers Frank Amill and Wilson Verdesoto. At the time, all three were assigned to the Housing Borough Bronx/Queens Impact Response Team (HBX/QIM). § 87(2)(b) described PO Amill as a dark-complexioned Dominican male, who was 6' with a slim build. He described PO Verdesoto as a 6', light-to-medium-complexioned Puerto Rican male, who had a muscular build and curly hair. Sgt. Lynch appeared to be a 5'9", light-complexioned Hispanic male, who had a muscular build. § 87(2)(b) noted that PO Verdesoto was the driver, while Sgt. Lynch sat to his right, and PO Amill sat directly behind Sgt. Lynch.

After the vehicle stopped, PO Amill exited, ran towards the group, and instructed its members not to move. The group immediately dispersed, and because it was an instinctual reaction to having a man charging at him, § 87(2)(b) ran. PO Amill chased § 87(2)(b) along the sidewalk of East 168th Street, but he stopped after approximately half a block because he dropped his radio. The marked police car also passed § 87(2)(b) and, turning on Tinton Avenue, obstructed his forward path. PO Verdesoto then exited and tackled him. This caused § 87(2)(b) to fall forward and land face down. Immediately after § 87(2)(b) hit the ground, PO Verdesoto laid on his back while PO Amill grabbed his legs. At this point, § 87(2)(b) head was forced down, with the right side of his face pressed against the ground. Sgt. Lynch then kicked § 87(2)(b) but he did not recall how many times because immediately afterwards, Sgt. Lynch punched the left side of his face four to five times in succession. While sustaining these blows, § 87(2)(b) was not handcuffed. In an attempt to get up, he had been moving his legs, arms and head, but only in reaction to being tackled and punched. Although he could not specifically describe these movements, he said that he was not attempting to kick or punch an officer, nor did he ever strike an officer. He did not recall the officers issuing him any instructions nor did he say anything to the officers at this time.

Sgt. Lynch stopped punching § 87(2)(b) when a crowd began to gather ten to fifteen feet away. Although § 87(2)(b) was a member of this crowd, § 87(2)(b) was uncertain if he was present while Sgt. Lynch hit him. Once the crowd formed, Sgt. Lynch instructed the officers to pick § 87(2)(b) up off the ground. They did, and while PO Amill ordered the crowd to back away, PO Verdesoto finished handcuffing § 87(2)(b). § 87(2)(b) was transported to the PSA7 stationhouse in a marked police van, during which time Sgt. Lynch noticed that § 87(2)(b)'s left brow was bleeding profusely. Sgt. Lynch remarked that § 87(2)(b) would need to visit the hospital. After waiting in a holding cell at the stationhouse for a number of hours, § 87(2)(b) was treated at Lincoln Hospital, where he received four stitches to the left side of his face. During the interview, there was an approximately half-inch-to-one-inch scar over his left brow, which he claimed was a result of this injury. The only other injury he sustained was a minor scrape to his left leg. § 87(2)(b) was charged with criminal possession of a firearm. (encl. 6a-d)

Attempts to Contact Civilians

Although § 87(2)(b) was uncertain if § 87(2)(b) was present during the alleged force, voicemails were left for him on February 12, 2010 and February 18, 2010. § 87(2)(b) was uncertain of § 87(2)(b)'s phone number and was unable to provide an exact address for § 87(2)(b). A Lexis-Nexis request yielded negative results, and it is unlikely that any statement provided by § 87(2)(b) would affect the recommended disposition.

On March 2, 2010, the undersigned conducted a field canvass in the vicinity of East 168th Street and Tinton Avenue in the Bronx. No witnesses were located, but the undersigned met a person who provide the phone number for the building director of 1189 Tinton Avenue, where security cameras were located. After calling several persons associated with building management and

submitting a subpoena, the undersigned received video footage on April 2, 2010. The footage did not capture any details relevant to this incident.

NYPD Statements

Subject Officer: SGT. SEAN LYNCH

Sgt. Lynch was born on § 87(2)(b). He is a white male who is 6'1", weighs 230 pounds and has brown hair and black eyes. From September 19 to September 20, 2009 he worked in uniform from 5:50pm to 2:47am. He worked as a patrol supervisor and was assigned to a marked patrol car with Officers Verdesoto and Amill. PO Verdesoto drove, Sgt. Lynch was in the passenger's seat, and PO Amill sat in back of PO Verdesoto. When the incident occurred, Sgt. Lynch was assigned to HBX/QIM. He is currently assigned to Bronx Narcotics.

Memo Book

Sgt. Lynch claimed to have lost his memo book on June 10, 2010, at approximately 12:00pm. He reported the missing memo book to Narcotics Bureau Inspections on June 15, and filed Complaint Report #§ 87(2)(b), which was closed as an unfounded complaint. (encl. 7a-c)

CCRB Statement

Sgt. Lynch was interviewed at the CCRB on July 14, 2010. As Sgt. Lynch and Officers Verdesoto and Amill drove past East 168th Street and Boston Road, in the Bronx, they saw § 87(2)(b) with a group of about five to six black and Hispanic males, 18 to 19 years of age, standing near the corner. When the group saw the officers drive past them, they began walking north on Boston Road. However, § 87(2)(b) separated from the group and began walking southbound on Boston Road, while repeatedly looking nervously over his shoulder at the officers. The officers then stopped, and PO Amill exited and approached § 87(2)(b). § 87(2)(b) reacted by immediately sprinting southbound and then turning east on East 168th Street. No instructions were issued to § 87(2)(b) before he began running. PO Amill pursued § 87(2)(b) on foot, and Sgt. Lynch exited and also ran after him.

During this foot pursuit, PO Verdesoto drove past § 87(2)(b) and, turning south on Tinton Avenue, blocked § 87(2)(b) path with his vehicle. Sgt. Lynch was approximately fifty to seventy-five feet away from the corner, when PO Verdesoto exited and stopped § 87(2)(b). By the time Sgt. Lynch had reached the corner, § 87(2)(b) was lying face-down on the ground while PO Verdesoto was lying over his back, yelling that § 87(2)(b) had thrown a gun while running. Initially, Sgt. Lynch said that he saw PO Verdesoto stop § 87(2)(b) by tackling him, but he later stated that he did not know how PO Verdesoto came to lay over § 87(2)(b) on the ground. Sgt. Lynch did not recall if § 87(2)(b) had been handcuffed by the time he reached the corner, but he did recall that PO Verdesoto was in control of the situation inasmuch as PO Verdesoto was not engaged in a struggle with § 87(2)(b) and did not need to exercise significant force to control him.

Sgt. Lynch recalled that there was a pole two to three feet from where PO Verdesoto and § 87(2)(b) were lying. Although Sgt. Lynch never saw § 87(2)(b)'s head strike the pole or ground, he recalled that at some point § 87(2)(b) told the officers that he sustained a cut over his brow and jokingly told the officers that his head had hit the pole. Although Sgt. Lynch was uncertain, PO Verdesoto may have told Sgt. Lynch that his tackling § 87(2)(b) caused his head to hit the pole. Sgt. Lynch never punched or kicked § 87(2)(b) nor slammed his head against an object, and he never saw an officer engaged in such actions. Sgt. Lynch vaguely recalled that § 87(2)(b)

was taken to the hospital, but he did not recall how it was determined that he needed to visit a hospital. He also recalled calling IAB, but he did not recall the reason. (encl. 8a-b)

Subject Officer: PO WILSON VERDESOTO

PO Verdesoto was born on § 87(2)(b). He is a Hispanic male who is 5'10" and 230 pounds. He has brown hair and eyes. On September 19 to September 20, 2009, he worked from 6:00pm to 2:35am. He worked in uniform, and was the driver of marked patrol car #9534. Seated next to him was Sgt. Lynch, while PO Amill sat in the backseat. PO Verdesoto is currently assigned to PSA3, but when the incident occurred, he was assigned to HBX/QIM.

Memo Book

An entry on September 19, 2009, at 8:45pm indicates that § 87(2)(b) was arrested on the corner of East 168th Street and Tinton Avenue in the Bronx for criminal possession of a loaded firearm. At 9:10pm, PO Verdesoto arrived at the PSA7 stationhouse, and at 3:55pm the following day, PO Verdesoto noted that Sgt. Bailey from IAB interviewed § 87(2)(b) (encl. 9a-b)

Arrest Report #§ 87(2)(b)

The arrest report notes that § 87(2)(b) was arrested on September 19, 2009, at 8:45pm, by PO Verdesoto, for violation of § 87(2)(a) 160.50. The report lists that no force was used to effect the arrest and that § 87(2)(b)'s physical condition was "apparently normal." The supervisor who approved the report was Sgt. Lynch. (encl. 10a-b)

CCRB Statement

On May 6, 2010, PO Verdesoto was interviewed at the CCRB. § 87(2)(g) After PO Verdesoto obstructed § 87(2)(b)'s forward path by stopping his vehicle in front of him on the corner of East 168th Street and Tinton Avenue, PO Verdesoto exited and tackled him. The tackle caused § 87(2)(b) to fall to the ground face first, hitting his head against a stop sign or no parking sign in the process. PO Verdesoto fell over § 87(2)(b) and soon rear cuffed him without any resistance from § 87(2)(b). Shortly around this time, Sgt. Lynch arrived and helped PO Verdesoto stand § 87(2)(b) up. As they did, they noticed a cut over his brow. (encl. 11a-b)

Witness Officer: PO FRANK AMILL

PO Amill of HBX/QIM was born on § 87(2)(b). He is a Hispanic male who is 5'11", weighs 225 pounds, and has black hair and brown eyes. From September 19 to September 20, 2009, he worked in uniform from 6:00pm to 2:35am. He was assigned to a marked police car with Sgt. Lynch and PO Verdesoto.

Memo Book

On September 19, 2009, an entry at 8:45pm notes that PO Verdesoto arrested § 87(2)(b) for criminal possession of a firearm at East 168th Street and Tinton Avenue. An entry on September 20, 2009 notes that at 12:00am, § 87(2)(b) was transported to § 87(2)(b). (encl. 12a-c)

CCRB Statement

PO Amill was interviewed at the CCRB on July 30, 2010. § 87(2)(g) He stated that he had arrived at East 168th Street and Tinton Avenue after § 87(2)(b) had already been stopped and handcuffed by PO Verdesoto. He did

not recall if Sgt. Lynch had arrived at the arrest location before or after him. He did not recall seeing any visible injuries on § 87(2)(b) and although his memo book indicated that § 87(2)(b) visited a hospital, he had no independent recollection of this or the reason for the visit. (encl. 13a-b)

Medical Records

FDNY ACR #§ 87(2)(b)

The report notes that § 87(2)(b) was treated on September 19, 2009, at the 42nd Precinct stationhouse, at approximately 10:56pm. It notes that he sustained a laceration to the left side of his forehead, which he stated was a result of having been kicked in the face. (encl. 14a-c)

§ 87(2)(b) received medical care at § 87(2)(b) on § 87(2)(b). According to the records of his treatment, § 87(2)(b) received five stitches to close the laceration on his forehead. (encl. 15a-b)

Civilian Criminal History and Arrest Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Civilian CCRB History

This is the first CCRB complaint filed by § 87(2)(b) (encl. 3)

Subject Officer CCRB History

Sgt. Lynch has been a member of the service for fourteen years, and there are no substantiated CCRB allegations against him. (encl. 2)

Conclusion

Identification of Subject Officers

§ 87(2)(b) description of the three participating officers matched the pedigree information of Sgt. Lynch and Officers Verdesoto and Amill. In addition, the officer statements agreed with § 87(2)(b) recollection of the officers' seating arrangement in their vehicle. § 87(2)(g)
§ 87(2)(b) alleged that PO Verdesoto tackled him, and PO Verdesoto acknowledged that this was the case. § 87(2)(g)
Finally, § 87(2)(b) alleged that the officer who kicked and punched him was not the officer who stopped him with his vehicle and tackled him (PO Verdesoto), or the officer who initially pursued him on foot but stopped when he dropped his radio (PO Amill). Additionally, his description of this officer and his placement in the police vehicle corresponded with Sgt. Lynch.
§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A-Abuse of Authority: Sgt. Sean Lynch stopped § 87(2)(b)

There is no dispute that § 87(2)(b) was hanging out with several unidentified individuals when he was first observed by Sgt. Lynch and the other officers. After § 87(2)(b) ran away, the officers chased after him on foot. Under New York State law, a pursuit is considered to be a seizure akin to a stop (Kamins 2.04[1]) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

It is undisputed that § 87(2)(b) was with a group of other individuals when the officers pulled up next to him. § 87(2)(b) stated that the officers exited their vehicle and PO Amill immediately ran towards the group and told them not to move. The officers provided consistent statements and noted that § 87(2)(b) behaved distinctly differently from other members of the group; specifically that the group looked at the officers and began to walk away, but § 87(2)(b) separated from them and nervously looked over his shoulder at the officers. When the officers approached § 87(2)(b) he ran, prompting the officers to chase after him. While Kamins notes that flight alone will not justify a stop (Kamins 2.03), it can serve as an escalating factor that will justify a pursuit (Kamins 2.04[2][f]) if the officers initially engaged in a common law right to inquire. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B- Force: PO Wilson Verdesoto used physical force against § 87(2)(b)

§ 87(2)(b) claimed that when fleeing from the officers, PO Verdesoto tackled him to the ground. PO Verdesoto acknowledged that he tackled § 87(2)(b) § 87(2)(g) during the course of this foot pursuit § 87(2)(b) reportedly disposed of a firearm § 87(2)(g)

§ 87(2)(b)

According to Patrol Guide Procedure 203-11, Use of Force, officers are obligated to use the minimal amount of force necessary to effectuate an arrest. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C–Force: Sgt. Sean Lynch used physical force against § 87(2)(b)

§ 87(2)(b) alleged that, while he was being restrained by Officers Verdesoto and Amill, Sgt. Lynch kicked him and punched his head four to five times, causing a laceration to the left side of his forehead. At the time, § 87(2)(b) said, he was unintentionally moving his legs and arms in response to being tackled. He denied striking or attempting to strike any officer.

Sgt. Lynch denied punching § 87(2)(b) and maintained that he did not recall how § 87(2)(b) was taken to the ground or if he was present when PO Verdesoto tackled and handcuffed him. According to PO Verdesoto, § 87(2)(b) received the laceration from hitting his head against a post when he was tackled. PO Verdesoto denied that § 87(2)(b) physically resisted after being tackled, and stated that Sgt. Lynch arrived at the location shortly after he finished handcuffing § 87(2)(b) PO Amill stated that he did not witness § 87(2)(b) being taken down and handcuffed.

All three officers denied that § 87(2)(b) was ever struck by an officer in any manner. It should be noted that while PO Verdesoto described the post that injured § 87(2)(b) as that of a stop sign or other traffic sign, Sgt. Lynch stated that the post he observed near the location of arrest was that of a traffic light. At approximately 11:15pm, after § 87(2)(b) was arrested and transported to the PSA7 stationhouse, Sgt. Lynch called the IAB command center, log #09-46338, and reported that § 87(2)(b) struck his head against a light post in the course of being tackled to the ground.

The records pertaining to § 87(2)(b) treatment at § 87(2)(b) note that he received five stitches to his left forehead for a laceration he received during an assault. According to FDNY ACR #§ 87(2)(b) approximately two hours after the incident, § 87(2)(b) told EMS workers at the PSA7 stationhouse that he received the laceration from having been kicked in the face. Although § 87(2)(b) alleged during his in-person statement to the CCRB that the laceration was caused from being punched, he also alleged that he was kicked. He denied ever striking his head against an inanimate object.

According to NYPD Patrol Guide Procedure 203-11, officers are required to use the minimum amount of force necessary to fulfill their duties and overcome resistance (encl. 1a-b). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Team: 1

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date